

INTEREST ARBITRATION

IN THE MATTER OF ARBITRATION )  
)  
LAKES REGIONAL HEALTHCARE )  
)  
EMPLOYER, )  
)  
and )  
)  
INTERNATIONAL UNION OF )  
OPERATING ENGINEERS, LOCAL 234 )  
)  
EMPLOYEE ORGANIZATION )  
)

AWARD

RECEIVED  
2008 APR 22 AM 8:37  
PUBLIC EMPLOYMENT  
RELATIONS BOARD

**APPEARANCES**

FOR THE UNION

MacDonald Smith, Attorney at Law

FOR THE EMPLOYER

Renee Von Bokern, Management Representative

**STATEMENT OF JURISDICTION**

This matter proceeds to Interest Arbitration pursuant to an independent impasse agreement mutually agreed upon by and between the Lakes Regional Healthcare, Spirit Lake, Iowa, a public employer, and the International Union of Operating Engineers, Local 234, a public employee organization. The independent impasse agreement provides a waiver of the March 15, 2003 deadline for completion of impasse services. The Arbitrator was selected from a list of Arbitrators furnished to the parties by the Public Employment Relation Board.

A hearing was held on April 15, 2008 at the Lakes Regional Healthcare Hospital, Spirit Lake, Iowa. The hearing commenced at approximately 10:00am. At hearing the parties were afforded the full and complete opportunity to introduce evidence and frame arguments in support of their respective positions on each item at impasse. Solely upon the evidence in the record and the arguments of the parties at hearing, this Award is rendered.

**CRITERIA APPLIED IN DRAFTING THIS RECOMMENDATION**

The Iowa Public Employment Act contains the criteria that are to be used by interest arbitrators in the formulation of interest arbitration awards. Section 22.9 of the Act sets forth the following, in relevant part:

The panel of arbitrators shall consider, in addition to any other relevant factors, the following factors:

- a. Past collective bargaining contracts between the parties including the bargaining that led up to such contracts
- b. Comparison of wages, hours and conditions of employment of the involved public employees with those of other public employees doing comparable work, giving consideration to factors peculiar to the area and the classifications involved.
- c. The interests and welfare of the public, the ability of the public employer to finance economic adjustments and the effect of such adjustments on the normal standard of services.
- d. The power of the public employer to levy taxes and appropriate funds of the conduct of its operations.

An interest arbitrator may choose one of three possible positions on an item at impasse. He or she may select the position of the public employer, the public employee organization or the recommendation of the fact finder. In the instant case the Parties have, through the independent impasse procedure, elected to forego Fact Finding and proceed directly to Interest Arbitration.

### **BACKGROUND**

Lakes Regional Healthcare (hereinafter "Employer") is located in Spirit Lake, Iowa and provides healthcare services to Spirit Lake, Iowa and the surrounding environs. The Employer employs 250 individuals including 100 Physicians and 50 other professional healthcare providers.

The International Union of Operating Engineers, Local Union 234 (hereinafter "Union") represents the employees in the Employer's Food Service, Engineering and Housekeeping areas. The Union has represented the employees for collective bargaining purposes for the current agreement which is the first agreement between the Employer and the Union.

The parties employed the mediation during the negotiation for the second agreement and at a mediation session held on February 19, 2008 the Union and the Employer reached a tentative agreement. On February 19, 2008 the Union rejected the tentative agreement and the matter proceeded to Arbitration.

### **ITEMS AT IMPASSE**

#### **FINAL OFFER OF THE UNION**

#### **Article 4 – Grievance Procedure**

1<sup>st</sup> paragraph, 2<sup>nd</sup> sentence to read: A grievance is defined as a timely filed claim by an Employee and/or Union that an expressed provision of the Agreement has been violated by Management level personnel at Lakes Regional Healthcare.

Add paragraph prior to Step 1 to read: The Union is responsible for notifying the Employer in writing of the designated Steward(s). Responses to formal grievance steps will be the Union designee.

Step 1, 1<sup>st</sup> sentence to read: Within five (5) weekdays (Monday through Friday) of the occurrence giving rise to the dispute, the Employee and the Union ("grievant") shall attempt to resolve the grievance informally by requesting a meeting with his/her immediate supervisor to discuss the matter.

Steps 2, 3, 4 and 5, and last paragraph: Change "grievant" to Union

#### Article 8 – Paid Time Benefits

4th paragraph: Delete the words "except in the case of military leave and jury duty".

#### Wage Rates

Effective 7/1/08

##### Engineering Department

	Start	1yr	2yrs	3yrs.
Engineering Tech	15.85	16.88	17.91	18.94

##### Housekeeping Department

Lead Housekeeper	14.00	14.15	14.30	14.45
Housekeeper	9.49	9.81	10.13	10.16
Maintenance Worker	10.84	10.95	11.06	11.18

##### Food Service Department

Cook	10.58	10.88	11.18	11.50
Food Service Worker	8.90	9.21	9.52	9.84
Food Service Worker/Cook	8.66	8.73	8.81	8.89
Food Service Steward	11.94	12.06	12.19	12.32

All other items to remain the same as current Contract, except for date changes (duration).

FINAL OFFER OF THE EMPLOYER

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#### Article 8 – Paid Time Benefits

4th paragraph: Delete the words “except in the case of military leave and jury duty”.

Article 10 Job Classifications and Straight Time Hourly Wage  
Effective July 1, 2008 Increase wage rates by 3.25%

All other items to remain the same as current contract except for date changes (duration).

The Union’s and Employer’s final offer are identical except for the amount of the wage increase and the wage schedule for the positions subject to the collective bargaining agreement. The Union has proposed a new structure to the wage schedule and the Employer has proposed a 3.25% across the board wage increase.

#### **POSITION OF THE PARTIES**

The Employer argued that the tentative agreement reached by the parties during the February 19, 2008 mediation session should be given substantial weight in formulating the instant award. Indeed, the Employer asserted that it be adopted as the award and cited several respected Interest Arbitrator’s decision that supported their assertion. The Employer also noted that an Iowa District Court has upheld an arbitration award the adopted the tentative agreement of the parties.

The Employer also argued that the tentative agreement is comparable to agreement reached with its other bargaining units. Specifically the Employer noted the agreement with the Paramedic Unit represented by AFSCME and the Nurses unit represented by the CWA AFSCME and the Employer reached a three (3) year agreement that provides for a 3.5% increase in wages for the

first year of the agreement and for a 2.5% wage increase in the subsequent years. The CWA and the Employer also agreed upon a three (3) year agreement that provides for a 3.5% increase in each of the three years.

Lastly, with respect to comparability, the Employer argued that the wages paid to the bargaining unit employees compare favorably with those paid to similar positions in similar size hospitals. The Employer also offered a comparison to hospitals in Northwest Iowa and noted that the wage rates it paid were equal to or more than, in all but one case, to those paid to similar positions.

Finally, the Employer noted that it, unlike most public employers, received only a portion of its funding from Dickinson County and that its primary source of revenue to fund wages and benefits is dependent on fees from services it provides to the public. Therefore, it must remain cost competitive with other similar employers and the tentative agreement and the comparability with other similar continue the Employers competitive position.

The Union argued the bargaining unit employees strongly believe that a change in the structure of the wage schedule is necessary to establish a rational progression for wage increases based upon tenure. The fact that the tentative agreement did not accomplish such progression was the reason for the rejection of it. In point of fact the 3.25% across the board wage increase continues the current wage schedule which the Union argued is irrational.

The Union admitted that its proposal is greater than the 3.25% wage increase of the tentative agreement but argued that a greater increase was needed to create a rational wage schedule that contained the progressivity necessary to align wages with tenure.

The Union noted that its initial proposal did contain a proposal that would have created a wage schedule that increased wages paid with tenure. The Union also noted that it voluntarily withdrew that proposal during the February 19, 2008 mediation session.

With respect to comparability with other similar situated employers the Union argued that in its proposed comparability group all but one, that being the Hamilton County Public Hospital, have wage schedule that contain a progression in wage increased based upon tenure.

The Union argued that the cost of its proposal was approximately \$24,311 and that was an approximate percentage increase of 8.6%. According to the Union this was justified by the need to establish a progressive wage schedule.

## DISCUSSION AND AWARD

The authority of the Arbitrator in framing an interest arbitration award is set forth in the Public Employment Relations Act, Chapter 20, Section 22, Sub-section 9 that states:

- 1 The panel of arbitrators shall consider, in addition to any other relevant factors, the following factors:
  - a Past collective bargaining contracts between the parties including the bargaining that led up to such contracts.
  - b Comparison of wages, hours and conditions of employment of the involved public employees with those of other public employees doing comparable work, giving consideration to factors peculiar to the area and the classifications involved
  - c The interests and welfare of the public, the ability of the public employer to finance economic adjustments and the effect of such adjustments on the normal standard of services.
  - d The power of the public employer to levy taxes and appropriate funds for the conduct of its operations

The above factors must be considered when formulating an interest arbitration award and each of the factors have been carefully considered in reaching a decision with respect to the one outstanding issue, that being the wage increase

The past history of collective bargaining contract and the bargaining that lead to those agreements is not instructive in the instant case as the parties have engaged in bargaining for only one prior agreement. Therefore neither the Union nor the Employer may point to a previous bargaining with respect to the issue of wages or wage schedule.

Comparison to other public employees performing similar work indicates that the 3.25% wage increase tentatively agreed upon will create wage rates for the bargaining unit employees that compare favorably with wages paid in either the Employer's proposed comparability group or the Union's proposed comparability. The Employer did not furnish data on the wage schedules of the employers in its proposed comparability group. The Union's proposed comparability group did indicate that all but one of the employers provide for wage schedules that increase wages with increases in the tenure of the employees.

The Employer admitted that the wage schedule needs to be revised but also argued that the current schedule is a result of a variety of factors such as longevity and the skill of the employees. The Employer stated that it is willing, at future bargaining, to consider changes in the wage schedule but those changes should be the result of bargaining and not imposed upon the parties by an Arbitrator.

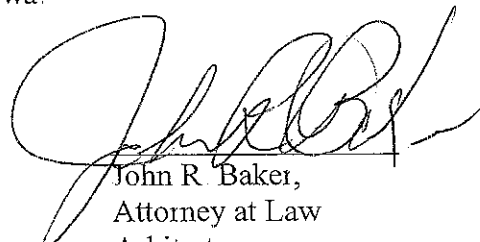
The Employer noted that it received some funding from Dickinson County but that the majority of its funds are derived from fees for service. This is different than most public employers who rely heavily on tax revenue to cover operating expenses, including wages. The Employer is more susceptible to competition from the private sector than are most public employers. While the increase proposed by the Union does not represent a large amount the record is devoid of evidence as to the impact that such increase would have on the overall budget of the Employer.

In the instant case the "other relevant" factor that must be given great weight is the fact that the Union and the Employer reached a tentative agreement. Many Arbitrators uphold a tentative agreement on the principal that not to do so would have a chilling effect on future bargaining. Some have rationalized that the neither a union nor an employer would make the last best effort to reach an agreement if they believe that when such offer was accepted it would not be enforced by an Interest Arbitrator.

Tentative agreements are not adamant accords which should be imposed upon the parties under any circumstances. A tentative agreement that is a product of mutual mistake or fraud should not be given any force or effect. Likewise, a material change in circumstance that alters to conditions upon which the tentative agreement was reached may result in such agreement not being enforced. The record indicates that the parties bargained in good faith and that such bargaining resulted in the tentative agreement for a 3.25% across the board wage increase. The record is devoid of any indication of mutual mistake or fraud or material change of circumstance.

After carefully considering the arguments of the Union and the Employer and the factors set forth in the Public Employment Relations Act the wage increase for the Employees covered by the collective bargaining agreement between the parties shall be a 3.25% across the board increase as tentatively agreed upon.

**DATED** this 20<sup>th</sup> day of April, 2008 at Minburn, Iowa.



John R. Baker,  
Attorney at Law  
Arbitrator

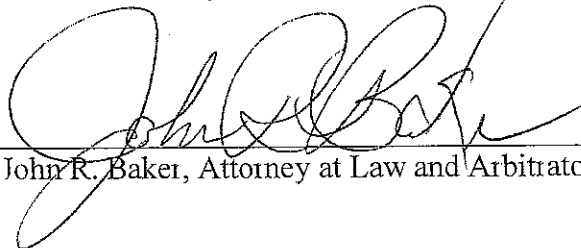
# CERTIFICATE OF SERVICE

I certify that on the 21<sup>st</sup> day of April, 2008, I served the foregoing Award of Arbitrator upon each of the parties to this matter by mailing a copy of them at their respective addresses as shown below:

MacDonald Smith  
Attorney at Law  
Smith & McElwain Law Offices  
530 Frances Building  
503 5<sup>th</sup> Street, Box 1194  
Sioux City, IA 51102

Renee Von Bokern  
2771 104th Street, Suite H  
Urbandale, IA 50322

I further certify that on the 21<sup>st</sup> day of April, 2008 I will submit this Award for filing by mailing it to the Iowa Public Employment Relations Board, 510 East 12<sup>th</sup> Street, Suite 1B, Des Moines, IA 50319.



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John R. Baker, Attorney at Law and Arbitrator

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